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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/919,325 08/26/97 BARCLAY W 2897-1-2-1-1

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IM21/1210

EXAMINER

WEILER, S

ART UNIT

PAPER NUMBER

1/01

DATE MAILED:

12/10/90

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/918,325

Applicant(s)
Barclay

Examiner
Anthony Weier

Group Art Unit
1761



☒ Responsive to communication(s) filed on 6/19/98 and 10/19/98

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 29-68 is/are pending in the application.

Of the above, claim(s) 52-68 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 29-51 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Newly submitted claims 52-68 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The product of claims 1-51 may be made by a different process, for example, by adding omega-3 fatty acid directly to conventionally produced milk.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 52-68 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. It should be noted that many of the references referred to in the PTO 1449's of the Information Disclosure Statement have not been received in the instant application. The references not received have not been initialed on these 1449's (attached). It should be noted that DF reference (i.e. Kyle et al) has not been received; only a Chemical Abstracts version of same was in the references submitted. Also, EP 231,904 has not been considered because an translation, English abstract, or explanation of the relevance of same has not been provided.

3. Claims 29-51 are rejected under 35 U.S.C. 102(b) as being anticipated by Ise or Hagemeister et al .

Claims 29-51 are rejected for the reasons set forth in the last Office Action (Paper No. 4, mailed 4/10/98).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Hagemeister et al or Ise taken together with Long (WO 8900606).

Claims 29-51 are rejected for the reasons set forth in the last Office Action (Paper No. 4, mailed 4/10/98).

It should be noted further that Long suggests a variety of reasons why one would use the microorganisms set forth therein (e.g. Thraustochytrids and Schizochytriums) as a source of omega-3 fatty acids for animal feed. For example, such sources do not possess the heavy metals or undesirable synthetic organic chemicals which have been found in fish oils used for feed. In addition, Long suggests that such source products do not possess a strong fishy odor like that found in the use of conventional fish oil. In view of such reasons, it would have been additionally obvious to one having ordinary skill in the art at the time of the invention to have employed the source set forth by Long to avoid the disadvantages present when working with fish oil.

5. Applicant's arguments filed 10/19/98 have been fully considered but they are not persuasive.

Applicant argues that the products of Hagmeister et al and Ise are different than that of the instant invention in terms of the fatty acid content. However, such assertions are not properly supported with evidence documented in the form of a declaration. Moreover, regarding the assertion that cows fed fish oil have a different taste and odor than that of the instant invention is

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not supported by a comparison showing. Even though Applicant provides a document that alleges milk produced by cows fed an unspecified fish oil has a taste that is "negatively affected," same does not shed light on a comparison between the feed sources of the instant invention and the use of fish oil.

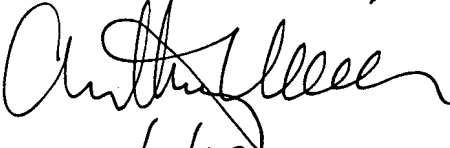
All other arguments have been addressed in view of the rejections as set forth above.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is (703) 308-3846.

Anthony Weier

December 4, 1998

ANTHONY J. WEIER
PRIMARY EXAMINER
GROUP 1300


12/4/98